

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

In the Matter of the Joint Application of  
SOUTHERN CALIFORNIA EDISON COMPANY  
(U 338-E) and PACIFIC TERMINALS LLC for  
SOUTHERN CALIFORNIA EDISON COMPANY  
to Sell Fuel Oil Pipeline Facilities to PACIFIC  
TERMINALS LLC and for PACIFIC TERMINALS  
LLC to Purchase such Fuel Oil Pipeline Facilities  
and to Operate Them as a Public Utility.

Application 02-03-035  
(Filed March 22, 2002)

**SCOPING MEMO AND RULING OF ASSIGNED COMMISSIONER  
AND ADMINISTRATIVE LAW JUDGE**

**Summary**

Pursuant to Rules 6(b)(3) and 6.3 of the Rules of Practice and Procedure,<sup>1</sup> this ruling sets forth the procedural schedule, designates the principal hearing officer, and addresses the scope of the proceeding following a prehearing conference (PHC) held on May 9, 2002.

**Background**

On March 22, 2002, Southern California Edison Company (Edison) and Pacific Terminals LLC (Pacific Terminals) filed a joint application seeking authorization for Edison to sell its fuel oil pipeline facilities, operated as the

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<sup>1</sup> Unless otherwise indicated, all citations to sections refer to the Public Utilities Code and citations to rules refer to the Commission Rules of Practice and Procedure, which are codified at Chapter 1, Division 1 of Title 20 of the California Code of Regulations.

Edison Pipeline and Terminal Company (EPTC) to Pacific Terminals and for Pacific Terminals to purchase such facilities and to operate them as a public utility. Protests were filed by The Coalition of California Utility Workers (CUE), the Office of Ratepayer Advocates (ORA), BP West Coast Products Company (BP WCP), and the City of Cerritos (Cerritos). BP WCP and Cerritos also filed motions to intervene in the proceeding. Edison and Pacific Terminals replied to the protests.

A PHC was held on May 9, 2002, and prior to that proceeding, the parties conducted a meet-and-confer telephone conference to discuss topics to be included in this proceeding and a procedural schedule. The parties filed a Joint PHC Statement setting forth the issues of concern of each party and a proposed procedural schedule. At the PHC, appearances were taken, parties stated their respective positions and the issues of concern to them in this proceeding, BP WCP and Cerritos' motions to intervene were granted, a service list for the proceeding was established, and the proposed procedural schedule was adopted.

### **Scope of the Proceeding**

The proposal set forth in the joint application is for the sale/purchase of the EPTC facilities. The first, and most important, issue the Commission must address is whether or not the sale is in the best interest of all the stakeholders. To begin, the facility is a functioning entity and as such brings a return to the ratepayers through a rate-sharing mechanism. Will a one-time percentage allocation to the ratepayers from the gain on sale to Pacific Terminals deprive ratepayers of a reliable, regular source of revenue return?

The current EPTC employees work for Edison. If the EPTC facilities are sold, those employees will no longer work for Edison, and might not even work at the facility. What impact will this have on those employees?

In addition, the Commission must determine how this potential sale will effect competition for petroleum products in the Los Angeles Basin. Although Pacific Terminals would be stepping into the shoes of Edison vis-à-vis the terminaling business in the Los Angeles basin, Pacific Terminals already has a presence in the field, and that creates the potential for strong concentration in one player, and for that player to exert power in the market.

The Commission is also interested in whether the proposed transfer of the facilities will have any impact on the environment, including on the health and safety of the facility workers and the citizens in the surrounding communities. As discussed further in this ruling, the applicants have been advised to file a Proponents Environmental Assessment (PEA) so the Commission can determine whether or not the project is subject to review under the California Environmental Quality Act (CEQA).

In summary, the Commission is interested in determining if it is in the public interest for SCE to divest the EPTC facilities, and if so, is Pacific Terminals an acceptable purchaser. The participants at the PHC raised additional topics of interest that will also be within the scope of this proceeding.

Briefly, ORA's focus is on the ratemaking issues and the reasonableness of (1) the valuation of the station facilities; (2) the proposed treatment of the gain on sale for the EPTC facilities; and (3) the proposed retention of \$9.3 million to decommissioned ratepayer supported fuel oil-related facilities. ORA does not oppose the sale of the EPTC facilities, but wants to ensure that the allocation of the gain on sale benefits the ratepayers.

BP WCP is concerned with ratemaking, and primarily with whether a market-based or cost-based methodology is used by Pacific Terminals to charge for the services at the EPTC facilities. BP WCP is also interested in whether the

facilities to be transferred are, or should be, under Commission jurisdiction and whether after the transfer to Pacific Terminals will BP WBP continue to receive tankage service, including transportation into and out of tankage, pursuant to its current contracts with Edison, and at just, reasonable, and non-discriminatory rates. .

CUE's foremost interest is the effect the sale would have on the employees who currently work for EPTC, the future safety and reliability of the facilities, the impact the sale might have on the competitive petroleum market, and on any environmental impacts associated with Pacific Terminals operation of the facilities. The City of Huntington Beach (Huntington Beach) also shares CUE's environmental concerns, especially as they relate to the health and safety of the residents of Huntington Beach.

## **CEQA**

Edison and Pacific Terminals did not file a PEA as part of their joint application because Pacific Terminals claims there will be no change of operation or new construction planned for the facilities. However, CUE opines that a review under the CEQA is required since Pacific Terminals may be contemplating changes in operation and new construction. In addition, CUE has no assurance that Pacific Terminals will use skilled workers to operate the facilities and that raises potential concerns about spills and environmental damage.

The Commission Energy Division (ED) reviewed the joint application and determined that a revised PEA<sup>2</sup> must be filed by Edison and/or Pacific Terminals

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<sup>2</sup> On January 31, 2000, Edison filed A.00-01-037 seeking Commission authorization to sell its EPTC facility, but it had not yet identified a buyer for the facility. Edison did,

*Footnote continued on next page*

before ED deems the application complete. On May 17, 2002, the Administrative Law Judge (ALJ) issued a ruling advising Edison and Pacific Terminals of this determination. The revised PEA should provide sufficient details regarding Pacific Terminals' intended use of the facilities and any updated circumstances concerning the site or operational details. The revised PEA should allow the ED to make a determination whether or not the project should be exempt from CEQA review.

All of the issues articulated by the parties in the Joint PHC statement and at the PHC, as set forth above, will be addressed in this proceeding. This list is not meant to foreclose the inclusion of additional topics as they arise during the course of discovery and preparation for the evidentiary hearings.

### **Discovery**

The Commission will not impose a discovery plan on the parties to this application proceeding. Proponents may make reasonable discovery requests and recipients should strive to comply with them, both in a timely fashion. The parties should attempt to resolve any discovery disputes with a good faith meet and confer. If that attempt does not resolve the dispute, the parties are to either e-mail or conference call the ALJ for resolution of the dispute. Written motions may only be filed if the parties' meet-and-confer session and the ALJ's conference are both unsuccessful in resolving the dispute. The Commission generally looks to the California Code of Civil Procedure for guidance in resolving discovery disputes. The ALJ's e-mail address is cab@cpuc.ca.gov.

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however, file a PEA in that docket before the application was dismissed. That PEA lacked sufficient detail of the proposed operational circumstances of the buyer. Since a buyer is now identified, a revised PEA should be filed in this application.

## **Schedule**

Both Edison and Pacific Terminals argued that hearings were not necessary and that the issues raised in the protests were addressed by way of their replies. However, all of the other parties contend that hearings are necessary, and the Commission agrees. Therefore, the following procedural schedules proposed by the parties in their joint PHC statement is adopted. There are two schedules for this proceeding: the Edison/ORR Ratemaking issues will follow one schedule, and the remaining issues concerning the sale will be addressed in the second schedule. If the parties are able to resolve any, or all, of the contentious issues before the hearings begin, the schedule may be modified, or cancelled, as warranted.

## **Edison/ORR Ratemaking Issue**

<b><u>Date</u></b>	<b><u>Event</u></b>
June 21, 2002	ORR submits report
July 17, 2002	Edison rebuttal
July 23-24, 2002	Hearings in San Francisco Commission Courtroom State Office Building 505 Van Ness Avenue San Francisco, CA 94102
September 13, 2002	Concurrent Opening Briefs
September 27, 2002	Concurrent Reply Briefs

### **Sale Issues**

<b><u>Date</u></b>	<b><u>Event</u></b>
June 21, 2002	Applicants Initial Testimony
July 19, 2002	Rebuttal Testimony
August 5, 2002	Surrebuttal Testimony
August 12-16, 2002	Hearings in Los Angeles Commission Courtroom State Office Building 320 West 4 <sup>th</sup> Street, Suite 500 Los Angeles, CA 90013
September 13, 2002	Concurrent Opening Briefs
September 27, 2002	Concurrent Reply Briefs

### **Hearing Preparation**

The parties are ordered to hold a prehearing meet-and-confer session<sup>3</sup> no later than August 7, 2002, for the purpose of identifying the principal issues on which the hearings will focus, key disputes, and any stipulations or settlements. To the extent feasible, parties should exchange exhibits in advance of this meet and confer so any objections can be addressed at that time. The numbering system for exhibits is as follows: Edison, 1-99; Pacific Terminals, 100-199; BP WCP 200-299; CUE, 300-399; Huntington Beach, 400-499; Cerritos, 500-599, ORA, 600-699, and Mr. Hernandez and Mr. Dominguez,<sup>4</sup> 700-799.

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<sup>3</sup> The parties may meet telephonically if it is more convenient than an in-person meeting.

<sup>4</sup> Mr. Hernandez and Mr. Dominguez attended the PHC both as members of CUE, and as individual members of Utility Workers Union of America Local 246.

Parties should also use the meet-and-confer to discuss witness schedules, time estimates from each party for the cross-examination of witnesses, scheduling concerns, and the order of cross-examination. The first morning of hearings on both July 23 and August 12 will begin at 10:00 a.m., but the time may be adjusted on subsequent days according to the participants needs.

Parties should serve, but not file, proposed testimony and rebuttal testimony. Before post-hearing briefs are filed, the parties must agree on an outline, and use that outline for the briefs and reply briefs.

Finally, the parties should comply with the Hearing Room Ground Rules set forth in Appendix A hereto.

### **Category of Proceeding and Need for Hearing**

This ruling confirms this case as ratemaking scheduled for hearing.

### **Principal Hearing Officer**

In accordance with Rule 5(k) and (l) of the Commission's Rules, ALJ Carol Brown is designated as the principal hearing officer for this proceeding.

### **Ex Parte Rules**

Ex parte communications in this ratemaking proceeding are subject to § 1701.3(c) and Rule 7(a)(1) and (c).

### **Service List**

The official service list is now on the Commission's web page. Parties should confirm that the information on the service list and the comma-delimited file is correct, and serve notice of any errors on the Commission's Process Office, the service list, and the ALJ. Parties shall e-mail courtesy copies of all served and filed documents on the entire service list, including those appearing on the list as "State Service" and "Information Only." E-mail is not a substitute for mail service.



**IT IS RULED** that:

1. The scope of the proceeding is as set forth herein.
2. The schedule for this proceeding is set forth herein.
3. The principal hearing officer in this proceeding pursuant to Rules 5(k) and (l) is Administrative Law Judge Carol Brown.
4. This ruling confirms that this proceeding is ratemaking and is scheduled for hearing.
5. Ex parte communications are subject to Pub. Util. Code § 1701.3(c) and Rule 7(a)(1) and (c) of the Commission's Rules of Practice and Procedure.
6. Parties shall follow the service list rules as set forth herein.
7. Parties shall comply with the Hearing Room Ground Rules set forth in Appendix A hereto.

Dated May 28 2002, at San Francisco, California.

/s/ CARL WOOD

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Carl Wood  
Assigned Commissioner

/s/ CAROL A. BROWN

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Carol A. Brown  
Administrative Law Judge

**Appendix A**  
**Page 1**

**Ground Rules for Exhibits and Hearings**

All prepared written testimony should be served on all appearances and state service on the service list, as well as on the Assigned Commissioner's office and on the Assigned ALJ. Prepared written testimony shall **not** be filed with the Commission's Docket Office.

Each party sponsoring an exhibit should, in the hearing room, provide two copies to the ALJ and one to the court reporter, and have at least five copies available for distribution to parties present in the hearing room. The upper right hand corner of the exhibit cover sheet should be blank for the ALJ's exhibit stamp. If there is not sufficient room in the upper right hand corner for an exhibit stamp, please prepare a cover sheet for the exhibit.

As a general rule, if a party intends to introduce an exhibit in the course of cross-examination, the party should provide a copy of the exhibit to the witness and the witness' counsel before the witness takes the stand on the day the exhibit is to be introduced. Generally, a party is not required to give the witness an advance copy of the document if it is to be used for purposes of impeachment or to obtain the witness' spontaneous reaction.

Generally, corrections to an exhibit should be made in advance and not orally from the witness stand. Corrections should be made in a timely manner by providing new exhibit pages on which corrections appear. The original text to be deleted should be lined out with the substitute or added text shown above or inserted. Each correction page should be marked with the word "revised" and the revision date.

Exhibit corrections will receive the same number as the original exhibit plus a letter to identify the correction. For example, Exhibit 5-A is the first correction to Exhibit 5.

Individual chapters of large, bound volumes of testimony may be marked with separate exhibit numbers, as convenient.

## **APPENDIX A**

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Partial documents or excerpts from documents must include a title page or first page from the source document; excerpts from lengthy documents should include a table of contents page covering the excerpted material.

Motions to strike prepared testimony must be made **at least two working days before the witness appears**, to allow the ALJ time for review of the arguments and relevant testimony.

Notices, compliance filings, or other documents may be marked as reference items. They need not be served on all parties. Items will be marked using letters, not numbers.

No food is allowed in the hearing room; drinks are allowed, but you must dispose of containers and napkins every morning and afternoon.

**(END OF APPENDIX A)**

**CERTIFICATE OF SERVICE**

I certify that I have by mail this day served a true copy of the original attached Scoping Memo and Ruling of Assigned Commissioner and Administrative Law Judge on all parties of record in this proceeding or their attorneys of record.

Dated May 28, 2002, at San Francisco, California.

/s/ FANNIE SID

Fannie Sid

**N O T I C E**

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

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The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074 or TTY# 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.

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